

# McCULLOUGH HILL LEARY, PS

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July 8, 2016

VIA ELECTRONIC MAIL

Keith Niven  
City of Issaquah  
Economic and Development Services Director  
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Re: Silverado Cluster Development  
Code Interpretation and Development Agreement DA16-00002

Dear Mr. Niven:

We represent the applicant Silverado Care ("Silverado"). We are writing to comment on the Code Interpretation relating to the Silverado project ("Project"), issued on June 2, 2016 ("Code Interpretation"). The Code Interpretation concludes that assisted living is permissible in the SF-E district under certain circumstances, including that "no structure shall be larger than a duplex that would otherwise be permitted if the use was residential." Under this Code Interpretation, the use proposed for the Project is allowed in the SF-E district. Silverado agrees with the Code Interpretation and offers the following additional analysis that supports its conclusion.

## The Silverado Proposal is an Allowed Use

Silverado's proposed Project is a cluster housing development of up to 6 duplexes containing 12 units. The Project meets all the development standards applicable to a duplex cluster housing development. In addition to the duplexes, the Project includes a banquet hall on a separate parcel, parking and landscaping, including an area for gardening and a play area for visiting children.<sup>1</sup> The duplex units will be used as apartments for seniors. Each duplex will include a kitchen, living room and between 4 and 6 bedrooms, occupied by up to six residents. The banquet hall will be used for common dining. The Project will function as a Memory Care Community, with cutting edge care provided by Silverado's skilled, compassionate staff. While receiving memory care services, the residents will use the Project just like anyone else uses their home – for sleeping, eating, visiting with family and friends and engaging in leisure activities. Silverado's "approach to memory care facilities is not to make them like a home, but to make it a resident's home fully and completely."<sup>2</sup>

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<sup>1</sup> In addition, two separate parcels will be set aside for future development of affordable housing.

<sup>2</sup> <https://www.silveradocare.com/care-offerings/memory-care-communities/> (Emphasis added.)

The Project is an allowed use in the zoning district in which it is located, the SF-E district. Primarily, the Project is an allowed duplex use. The SF-E district allows duplex dwellings in a cluster housing development. Issaquah Municipal Code (“IMC”) 18.06.130. “Dwelling, duplex” is defined as “A building, which is located on one (1) legal lot or parcel, containing two (2) dwelling units designed exclusively for occupancy by two (2) single households living independently of each other.” IMC 18.02.060. A “single household” is defined as “[o]ccupancy of a single dwelling unit limited to family, or cohabitants, or persons who have obtained a grant of reasonable accommodation.” IMC 18.02.210. A “family” is

A person, or two (2) or more persons related by blood or marriage or law living together as a single housekeeping unit in a single dwelling. In addition, the following uses shall be accepted as families pursuant to the requirements of state and/or federal law . . .

C. Consensual living arrangements of the disabled protected pursuant to the Federal Fair Housing Act amendments.

IMC 18.02.080. “Cohabitants” are “[a] group not more than five (5) persons not meeting the definition of ‘family,’ living together as a single housekeeping group in a dwelling unit.” IMC 18.02.050. Here, the duplex units are each located on one legal lot and each contain two dwelling units designed exclusively for occupancy by two single households meeting the definition of “family” or “cohabitants.” Accordingly, the Project is an allowed duplex use.

The Project also includes an allowed banquet hall use. “Banquet/meeting/reception hall” is an allowed use in the SF-E zone. IMC 18.06.130. A “banquet/meeting/reception hall” is:

A public or private meeting facility which may also include on-site kitchen/catering facilities. A banquet/meeting/reception hall usually serves as a location for activities such as weddings and other such gatherings by appointment only, but may also serve as a regular meeting place for a specific organization such as a fraternal association, a trade union, or a veterans’ association. Banquet/meeting/reception halls have limited hours of operation and are usually not open on a daily basis.

IMC 18.02.040. Here, the banquet hall is a private meeting facility that includes on-site kitchen facilities. It serves as a regular meeting/dining location for residents of the Project. The dining hall is open limited hours (typically 8 am to 7 pm). The dining hall is an allowed use.

The fact that memory care services are provided to residents does not change the fundamental nature of the Project as a permitted duplex and banquet hall use. If a senior living in his or her own home chooses to have a nurse come to provide in-home services, that activity does not change the nature of the home from single family to some other use. The same principle applies here. The residents of the Project have services provided to them in their homes. There are no structures (or portions of structures) used exclusively to support the memory care services. The provision of services to residents does not change the nature of the Project as a permitted duplex/banquet hall use.



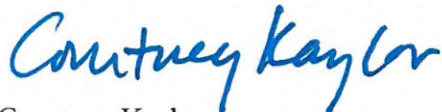
To the extent that the memory care services are considered an independent use, which they should not be, they are allowed as an accessory use. The following accessory uses are allowed in the SF-E district: Adult Family Home/Group Care Facility, Community/Crisis Residential Center. IMC 18.06.130. A "Group Care Facility, Adult" is defined as "a residential home in which a person or persons provide personal care, special care, room, and board to more than (1) but not more than (6) adults who are not related by blood or marriage to the person or persons providing the services." IMC 18.02.090. Here, personal/special care is provided to up to six residents in each duplex. This is a Group Care Facility use that is accessory to the primary duplex use. "Community Residential Center" is not a defined use. However, "Community Residential Facility" is defined as a Nursing Home, Residential Care Facility or Retirement Home. IMC 18.02.050. All of these uses are types of Assisted Living Facility use. IMC 18.02.030.<sup>3</sup> The accessory memory care services provided in the Project may be considered to fall within this use category. The City Code clearly contemplates that personal care may be provided in the home as an accessory use. That is just what will occur in the Project.

The Code Interpretation is Final and Binding

The Code Interpretation provides that an Assisted Living Facility use may be allowed in the SF-E district under certain circumstances. The effect of the Interpretation is to allow the Project in the SF-E district in which it is located. The Interpretation was issued on June 2, 2016. It was subject to administrative appeal under IMC 18.04.250. No party appealed the Interpretation and the deadline for appeal has passed. The Interpretation is a land use decision that may only be appealed pursuant to the Land Use Petition Act ("LUPA"). RCW 36.70C.020(2)(b). A party must exhaust its administrative remedies in order to have standing to file an appeal under LUPA. RCW 36.70C.060(2)(d). Since no party filed an administrative appeal, no party has standing to appeal under LUPA. *Id.* The Interpretation is therefore final and binding on all parties, including Silverado, unrelated third parties the City. *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002).

Silverado appreciates your work on this Project. Please let me know if you have any questions or want to discuss.

Sincerely,



Courtney Kaylor

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<sup>3</sup> A Nursing Home is occupied "by convalescents, invalids and aged persons and wherein nursing, dietary and other personal services are rendered" excluding "mentally challenged patients and patients with contagious or communicable diseases." *Id.* A Residential Care Facility is a state-licensed facility that cares for 5-15 people with functional disabilities. *Id.* A Retirement Home is "an establishment providing domestic care of retired persons who are not in need of medical or nursing treatment." *Id.* The accessory memory care services provided in the Project may be considered to fall within one of these categories.

cc: Paul Mullin, Silverado Care  
Jim Haney, City Attorney  
Christopher Wright, Project Oversight Manager